IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

ARBITRATION PETITION NO.426 OF 2007

Citicorp Finance (India) Ltd. ...Petitioner.
Vs.
Sangrameinh Jadhav & Anr. ...Respondents.

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Ms.Shakuntala Joshi i/b.S.I. Joshi for the Petitioner.
Mr. S.V. Sadavarte for the Respondents.

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CORAM :DR.D.Y.CHANDRACHUD, J.
19th December, 2007.

P.C.:

1. The Petitioner has provided a loan of Rs. 17.64 lakhs to the First Respondent under a Loan cum Hypothecation Agreement entered into on 29th March, 2006. The loan was repayable with interest at the rate of 11.85% per annum in 36 monthly installments. Clause 5 of the agreement provides for the events of default and clause 6 provides for the rights of the Petitioner on default including repossession of the asset. Clause 16 provides for arbitration. The Respondents have executed an irrevocable Power of Attorney in favour of the Petitioner inter alia to take possession of the hypothecated vehicle in case of default under the Loan cum Hypothecation agreement. There has been a default on the part of

the Respondents. As on the date of the filing of the petition, an amount of Rs. 15.77 lakhs, approximately, was due and payable. The Petitioner has invoked the arbitration clause.

2. On 27th November, 2007 an adjournment was granted on the request of counsel appearing for the First Respondent to file a reply. No reply has been filed. Pending further orders, there was a direction of this Court not to alienate, encumber or part with possession of the hypothecated machinery, more particularly described in Exhibit G to the Petition. An arbitral award has been passed on 19th November, 2007 in the amount of Rs.15,04,357.71 together with interest from 15th April, 2007.

3. In these proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, the Petitioner has sought the appointment of the Court Receiver as Receiver of the hypothecated machinery, more particularly described in Exhibit G to the petition. In the absence of any defence or contest by the Respondents, the averments contained in the petition would have to be accepted. There has been a default in the payment of the outstanding dues. It would, therefore, be necessary to safeguard

the interest of the Petitioner by appointing the Court Receiver as receiver of the hypothecated machinery. The appointment of the Receiver is necessary in order to ensure that the machinery is not wasted or alienated, thereby defeating the rights of the Petitioner. Under Section 9 of the Arbitration and Conciliation Act, 1996 the Court has the power to grant an interim measure of protection even after the making of the arbitral award, but before it is enforced under Section 36. Since the arbitral award is still to be enforced, this Court will have jurisdiction to pass an interim measure of protection. Hence the following order :

(1) The Court Receiver is appointed as receiver in respect of the machinery, more particularly described in Exhibit G to the petition;

(2) Within a period of two weeks from today, the Respondents shall be at liberty to inform the Receiver if they are desirous of acting as agents of the Receiver. The Respondents shall then be appointed by the Court Receiver as agents subject to security and royalty. The Receiver shall determine the quantum of security and royalty having regard to the terms and conditions

contained in the Loan cum Hypothecation Agreement (Exhibit A to the Petition);

(3) In the event that the Respondents do not communicate their willingness to the Receiver to act as agents within the period stipulated, it would be open to the Receiver to take forcible possession of the hypothecated machinery, more particularly described in Exhibit G and apply thereupon to the Court for further orders by submitting a report;

(4) Until the Receiver takes possession, there shall be an interim injunction, restraining the Respondents from alienating, parting with possession or encumbering or creating any third party right in respect of the machinery in Exhibit G.

The Arbitration Petition is accordingly disposed of.

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